

### REMARKS

Claims 1, 12, 13, 18, 21 and 35 have been amended, claims 8 and 9 have been cancelled, and new claim 36 has been added. Thus, claims 1-4, 6, 10-29, and 32-36 are pending in this application.

The sections set forth below are presented in the same order as that contained within the final Office Action of May 24, 2004 for ease of reference.

#### Claim Rejections under 35 U.S.C. 103(a)

Claims 1-4, 6, 8-17, 21-23 and 32-35 were rejected for allegedly being unpatentable over Wright, U.S. Patent No. 5,285,041 ("Wright") in view of Isaacman et al, U.S. Patent No. 5,936,527 ("Isaacman").

Independent claims 1, 12, 13, 18, 21 and 35 have been amended to more distinctly claim the invention, and consequently claims 8 and 9 have been cancelled. In particular, claim 1 now recites a single-serving or multi-serving receptacle, a food- or beverage-forming product present within the receptacle, and a programmable tag. Claim 1 also recites that the dispenser is configured to prepare and dispense a food or beverage product from the food- or beverage- forming product by diluting said food- or beverage- forming product with a diluent in the dispenser. In addition, claim 1 recites that the food- or beverage- forming product is configured for providing a food or beverage product when diluted with diluent in the dispenser. The programmable tag is associated with the product and includes machine-readable instructions to control at least one of preparing the food or beverage, or dispensing the food or beverage from the dispenser. Independent claims 12 and 13 have been similarly amended to make it clear that the method includes encoding instructions on the machine-readable tag for preparing or dispensing a single-serving or multi-serving of the food or beverage, and that the food- or beverage- forming product is configured for providing a food or beverage product when diluted with diluent in the dispenser. In addition, claims 12 and 13 have been amended to recite the preparation or dispense of the single-serving or multi-serving of the food or beverage includes a diluting step of the food- or beverage- forming product with a diluent. The method of determining consumption of foods or beverages from a dispenser of claim 18 has also been amended to recite recording information on a tag associated with a single-serving or multi-serving product or a single-serving or multi-serving package and that the food- or beverage- forming product is configured for providing a food or beverage product when diluted with diluent in the dispenser. Claim 21, to a system for dispensing a product, has likewise been amended to clarify that the system is directed to

include at least one single-serving or multi-serving food package, a programmable tag, and a dispenser for preparing and dispensing a food or beverage from the single-serving or multi-serving package, and that the food- or beverage- forming product is configured for providing a food or beverage product when diluted with diluent in the dispenser. Lastly, claim 35 has been amended and relates to a single-serving or multi-serving food package that includes a receptacle and a programmable tag, and that the food- or beverage- forming product is configured for providing a food or beverage product when diluted with diluent in the dispenser. Support for these changes can be found, for example, in the application on page 9, lines 10-12, on page 16, lines 16-19 and on page 20, line 13 to page 21, line 14. No new matter has been added. These changes to claims 1, 12, 13, 18, 21 and 35 are necessary to more distinctly claim the invention, and were not presented earlier because the Isaacman reference had not been cited. In addition, these changes place the claims in better form for appeal. Therefore, the applicants respectfully request entry of all of the claim amendments.

In contrast to the invention recited by independent claims 1, 12, 13, 21 and 35, and as recognized on page 3, line 1 of the Action, the automated food vending system of Wright does not utilize a programmable tag. In addition, Wright does not teach or suggest to program a tag at a manufacturing plant with either instructions or a verification code in electronic form as recited in claims 1, 12, 13 and 35. Rather, Wright teaches to print a code on the outside of a food package. Moreover, the vending system of Wright is not configured to prepare and dispense a food or beverage product from the food- or beverage- forming product by diluting said food- or beverage- forming product with a diluent in the dispenser. The vending system of Wright pertains to standard food packages containing prepared foods such as pizza and the like. The vending system of Wright also requires a microwave oven having an interior cavity that is shaped to receive a correspondingly shaped food package. This enables the food package to be held in a specific orientation so that a code reader can locate and read the printed code (see col. 5, lines 10-26 and col. 6, lines 11-16 of Wright). The vending system of Wright does not achieve any diluting step where a food- or beverage- forming product is diluted with a diluent such as cold or hot water.

The Isaacman patent pertains to RFID tags for locating and tracking files, documents or similar moveable objects on shelves, in drawers, or in metal filing cabinets in offices, warehouses or other commercial settings (see col. 4, lines 44-53). In preferred embodiments, the Isaacman system includes a PC, a host transceiver, a plurality of local exciters, and a plurality of high frequency passive tags. The host transceiver transmits a first RF signal to the local exciters, and the local exciters receive the first RF signal and selectively transmit a

second RF signal at a different frequency to the plurality of tags to excite the tags. An identified tag from the plurality of tags selectively responds the host transceiver (see col. 5, lines 9-24). Thus, Isaacman does not suggest or teach a food package having a single-serving or multi-serving food or beverage receptacle associated with a programmable tag that includes information for controlling the preparation or dispensing of that food or beverage from a dispenser as claimed. Furthermore, it does not suggest or teach to use a programmable tag in a dispenser configured to prepare or dispense a food or beverage product by dilution with a diluent from a food- or beverage forming product.

The applicants respectfully assert that it would not have been obvious to consider Wright and Isaacman together. As explained above, Wright relates to a food vending system that includes a microwave oven with a shaped cavity to receive a correspondingly shaped package. The shaped cavity enables the package to be oriented so that a code reader can locate and read a code printed on that particular food package. Wright also fails to disclose a dispenser where food or beverage is obtained by dilution with a diluent. Isaacman is in an unrelated field, disclosing a system that uses a plurality of RFID tags to locate and track a plurality of moveable objects such as documents on shelves, in drawers, or in filing cabinets. The Office Action recites that: "In view of Isaacman's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to modify the vending system of Wright to employ reprogrammable RFID tags to store the products information." (Office Action, page 3, lines 4-6) The applicants respectfully disagree. In particular, it would not have been obvious for the skilled person to have considered Isaacman in connection with Wright because first, they are in unrelated fields, and second, Isaacman is not reasonably related to the particular problems of preparing or dispensing a single serving food or beverage product wherein the food- or beverage- forming product is configured for providing a food- or beverage- forming product with diluent in a dispenser.

The Federal Circuit Court of Appeals in In re Oetiker, 977 F.2d 1443, 24 U.S.P.Q.2d (Fed. Cir. 1992) stated:

"In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problems with which the inventor was concerned." Id. at 1497, citing In re Diminski, 796 F.2d 436, 442, 230 U.S.P.Q. 313, 315 (Fed. Cir. 1986).

Oetiker's claims were directed to improvements in a metal hose clamp. The Examiner in that case rejected the claims based on a reference concerning fasteners for garments in combination with an earlier patent of Oetiker concerning a hose clamp. In concluding that the references were improperly combined, the Court stated:

"We have reminded ourselves and the PTO that it is necessary to consider 'the reality of the circumstances', In re Woods, 599 F.2d 1032, 1036, 202 U.S.P.Q. 171, 174 (CCPA 1979) --in other words, common sense-- in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution facing the inventor.

It has not been shown that a person of ordinary skill seeking to solve a problem of fastening a hose clamp, would reasonably be expected or motivated to look to fasteners for garments. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness." Id. at 1447.

The applicant respectfully asserts that the reality of the circumstances in the present case is that one of the ordinary skill would not look at a reference directed to an RFID tag system for locating and tracking documents to solve problems concerning preparing or dispensing single-serving food or beverage products. Thus, Isaacman has been improperly combined with Wright.

Furthermore, there is no suggestion in Isaacman or in Wright for the proposed combination. As the Court of Appeals for the Federal Circuit stated in ACS Hospital Systems Inc. v. Montefiore Hospital, 221 USPQ 929,

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so.

Further, in In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984), emphasis provided, citing In re Sernaker, 217 USPQ 1, 6-7 (Fed. Cir. 1983) and In re Imperato, 179 USPQ 730, 732 (CCPA 1973):

The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.

Yet further, even if Wright and Isaacman were combined, and again, there is no suggestion in either reference for doing so, the present invention would not be achieved. Wright specifically teaches a microwave oven having a shaped cavity for use with a correspondingly shaped food package wherein the package includes a printed code in a predetermined position (for example, see claim 1, col. 9, lines 35-46 of Wright). The shaped cavity ensures that the printed code is lined up correctly for reading by a code reader when the package is inserted into the oven (see col. 5, lines 10-26 of Wright). Isaacman teaches an automatic tag system architecture that utilizes a plurality of tags and exciters to automatically identify the location of any tagged document in an office. An embodiment includes RFID tags attached to documents, a host RF transaction system, a plurality of local exciters, and a PC (see col. 6, lines 42-58 of Isaacman). It is not clear how the tag system of Isaacman could be adapted to the automatic food vending system of Wright. Moreover, even if Isaacman and Wright were combined, the present invention would not be the result as neither reference, alone or in combination, teaches or suggests a food package or a method for preparing a single-serving or multi-serving food package that includes a programmable tag that is programmed at a manufacturing plant to include either instructions or a verification code for controlling either preparation of the single-serving food or beverage from the product in the dispenser, or dispensing of the food or beverage from the dispenser. In addition, neither reference teaches or suggests a method for determining consumption of foods or beverages from a dispenser that includes a programmable tag and a dispenser adapted for reading the programmable tag, updating a computer database with information concerning the dispensed foods or beverages, and sorting the information to determine consumption patterns for the single-serving foods or beverages. Thus, at least for these reasons, independent claims 1, 12, 13, 21 and 35 are patentably distinct from Wright and Isaacman, taken either alone or in combination. Since claims 3, 4, 6, 8-11, 14-17, 22-23 and 32-34 depend, either directly or indirectly, on these independent claims, they are patentably distinct for at least the same reasons. Thus, withdrawal of this 35 U.S.C. 103(a) rejection is respectfully requested.

Claims 18-20 and 25-29 were rejected for allegedly being unpatentable over Wright in view of Isaacman and further in view of Buckley et al., U.S. Patent No. 5,285,041 ("Buckley").

Independent claim 18 recites a method for determining consumption of food or beverage products from a dispenser that includes sorting the information to determine consumption patterns for purposes of strategic market planning. Electronic information is recorded on a tag associated with a single-serving or multi-serving food-forming or beverage-forming product or a single-serving or multi-serving package, a computer database is updated, and the dispenser reads the tag when the single-serving or multi-serving product is dispensed. As explained above, claim 18 is patentably distinct from Wright and Isaacman, and neither Wright, Isaacman or Buckley, alone or in combination, suggests or teaches to sort information to determine consumption patterns of dispensed single-serving or multi-serving food or beverage packages in which the food- or beverage-forming product is diluted with a diluent in the dispenser. Thus, claim 18 is patentably distinct thereover. Claims 19 and 20 depend on claim 18 and thus are allowable for at least the same reasons. Thus, withdrawal of the 35 U.S.C. 103(a) rejection of claims 18 and 20 is respectfully requested.

Claim 21 is patentably distinct from Wright and Isaacman as explained above. Buckley also fails to teach or suggest a system for dispensing a single-serving or multi-serving food or beverage product that includes a programmable tag as recited in claim 21. Thus, claim 21 is patentably distinct from Wright, Isaacman and Buckley, either taken alone or in combination. Thus, claims 25-29 which depend upon claim 21 are patentably distinct for at least the same reasons, and withdrawal of the 35 U.S.C. 103(a) rejection of claims 25-29 is respectfully requested.

In view of the above amendments and remarks, the applicant respectfully requests withdrawal of all of the 35 U.S.C. 103(a) rejections and allowance of the pending claims.

#### New Claim 36

New dependent claim 36 has been added, and it more particularly claims the food package of claim 1. In particular, claim 36 recites that the tag includes information in electronic form regarding at least one of features, properties and processing of the product. Support for such a claim can be found, for example, on page 8, line 22 to page 9, line 3 of the application. No new matter has been added, and in view of the cancellation of claims 8 and 9, the applicants respectfully request entry of new dependent claim 36.

Conclusion

In view of the amendments and remarks made herein, the applicants respectfully submit that the entire application is in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree that all pending claims are allowable, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of these claims

Respectfully submitted,

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